

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 253

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO
INSURANCE CODE; PROVIDING FOR EXAMINATION OF INSURERS;
PROVIDING FOR CERTAIN FEES; PROVIDING FOR PROCEDURES FOR
LICENSURE OR CERTIFICATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-4-5 NMSA 1978 (being Laws 1984,
Chapter 127, Section 49, as amended) is amended to read:

"59A-4-5. EXAMINATION OF INSURERS.--

A. For the purpose of determining financial
condition, fulfillment of contractual obligations, methods of
doing business, treatment accorded policyholders and compliance
with law, the superintendent shall, as often as [he] the
superintendent deems advisable, examine or investigate the
affairs, transactions, accounts, records and assets of each

underscored material = new
[bracketed material] = delete

1 authorized insurer and of any other person as to any matter
2 [~~which~~] that the superintendent in [~~his~~] the superintendent's
3 sole discretion has determined to be relevant to the financial
4 affairs of the insurer or to the examination. Except as
5 expressly otherwise provided, the superintendent shall so
6 examine each domestic insurer not less frequently than every
7 five years. In scheduling and determining the nature, scope
8 and frequency of the examinations, the superintendent may
9 consider such matters as the results of financial statement
10 analyses and ratios, changes in management or ownership,
11 actuarial opinions, reports of independent certified public
12 accountants, evidence of market practices, policyholder
13 complaints and other criteria as set forth in the handbooks for
14 financial or market conduct examiners adopted by the national
15 association of insurance commissioners in effect when the
16 superintendent exercises discretion under this section.

17 B. For like purposes, the superintendent shall
18 examine each insurer, or proposed insurer, applying for an
19 initial certificate of authority to transact insurance in this
20 state. The initial examination shall be completed prior to
21 issuance of a certificate of authority.

22 C. Whenever the superintendent examines the affairs
23 of [~~any~~] a domestic insurer, [~~he~~] the superintendent may invite
24 the representative of the insurance supervisory agency of at
25 least one other state, if any, in which the insurer is an

.175494.2SA

underscored material = new
[bracketed material] = delete

1 authorized insurer, to participate in the examination.

2 D. Until January 1, 1994, in lieu of making [~~his~~]
3 the superintendent's own examination of a foreign or alien
4 insurer, the superintendent may accept a full report of an
5 examination of the insurer made by competent examiners as of a
6 date not more than one year prior and participated in by at
7 least two states in which the insurer was authorized to
8 transact insurance. The report shall be certified by the
9 insurance supervisory official of the state under whose
10 jurisdiction the examination was conducted. The superintendent
11 may, at the superintendent's discretion, so accept [~~such~~] the
12 report of examination [~~so made~~] as of a date more than one year
13 but not more than three years prior; and with respect to an
14 alien insurer, the superintendent may at the superintendent's
15 discretion so accept [~~such~~] a report of recent examination made
16 by the insurance supervisory official of the port of entry
17 state of the insurer into the United States without
18 participation therein of another state.

19 E. After January 1, 1994, examination reports
20 prepared by examiners employed by other state insurance
21 departments may be accepted only if:

22 (1) made as of a date not more than five years
23 prior to acceptance and the examiner in charge was employed by
24 and under the direction of the insurance commissioners of the
25 insurer's state of domicile or port of entry, which insurance

.175494.2SA

underscored material = new
[bracketed material] = delete

1 department was at the time of the examination accredited under
2 the financial regulation standards and accreditation program of
3 the national association of insurance commissioners; or

4 (2) made as of a date not more than three
5 years prior to acceptance and the examination was performed
6 under the supervision of an accredited insurance department or
7 with the participation of one or more examiners who were
8 employed by an accredited state insurance department and who,
9 after a review of the examination work papers and report, state
10 under oath that the examination was performed in a manner
11 consistent with the standards and procedures required by their
12 insurance department.

13 F. As far as practical, the superintendent shall
14 conduct examination of a foreign or alien insurer in
15 cooperation with the insurance supervisory officials of other
16 states in which the insurer is authorized to transact
17 business."

18 Section 2. Section 59A-4-6 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 50, as amended) is amended to read:

20 "59A-4-6. EXAMINERS AND SPECIALISTS.--

21 A. The superintendent may appoint one or more
22 competent individuals, sufficiently knowledgeable in applicable
23 accounting and operations, as examiners to represent the
24 superintendent in an examination and shall fix the reasonable
25 compensation of the examiners.

.175494.2SA

underscored material = new
[bracketed material] = delete

1 B. The superintendent may also employ and fix
2 reasonable compensation of independently contracting
3 accountants knowledgeable of insurance accounting principles
4 and practices, actuaries, attorneys, appraisers and other
5 specialists not otherwise part of the insurance department
6 staff as the superintendent deems necessary for the
7 examination, the cost of which shall be borne by the company
8 ~~[which]~~ that is the subject of the examination. All
9 specialists shall be under the direction and control of the
10 superintendent.

11 ~~[C. All examiners and specialists shall be subject~~
12 ~~to Sections 59A-2-5 and 59A-2-6 NMSA 1978.]"~~

13 Section 3. Section 59A-4-15 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 59, as amended) is amended to read:

15 "59A-4-15. HEARINGS--IN GENERAL.--

16 A. The superintendent may hold a hearing, without
17 request by others, for any purpose within the scope of the
18 Insurance Code.

19 B. The superintendent shall hold a hearing:

20 (1) if required by any other provision of the
21 Insurance Code; or

22 (2) upon written request for a hearing by a
23 person aggrieved by any act, threatened act or failure of the
24 superintendent to act, or by any report, rule, regulation or
25 order of the superintendent, other than an order for the

.175494.2SA

underscored material = new
[bracketed material] = delete

1 holding of a hearing or order on a hearing or pursuant to such
2 an order on a hearing of which [~~such~~] the person had notice.

3 C. The request for a hearing shall briefly state
4 the respects in which the applicant is so aggrieved, the relief
5 to be sought and the grounds to be relied upon as basis for
6 relief. The request shall be received by the superintendent no
7 later than thirty days from the date of the act, threatened
8 act, failure of the superintendent to act, report, rule,
9 regulation or order of the superintendent.

10 D. If the superintendent finds that the request is
11 made in good faith, that the applicant would be so aggrieved if
12 the stated grounds are established and that such grounds
13 otherwise justify the hearing, the superintendent shall
14 commence the hearing within ninety days after filing of the
15 request, unless postponed by mutual consent.

16 E. Pending the hearing and decision thereon, the
17 superintendent may suspend or postpone the effective date of
18 the action as to which the hearing is requested. If upon
19 request the superintendent refuses to grant such suspension or
20 postponement, the person requesting the hearing may apply to
21 the district court of Santa Fe county for a stay of the
22 superintendent's action or proposed action pending the hearing
23 and the superintendent's order thereon.

24 F. Except as otherwise expressly provided, this
25 section does not apply to hearings relative to matters arising

.175494.2SA

underscored material = new
[bracketed material] = delete

1 under Chapter 59A, Article 17 NMSA 1978."

2 Section 4. Section 59A-6-1 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 101, as amended) is amended to read:

4 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
5 the following fees:

- 6 A. insurer's certificate of authority -
 - 7 (1) filing application for certificate of
8 authority, and issuance of certificate of authority, if issued,
9 including filing of all charter documents, financial
10 statements, service of process, power of attorney, examination
11 reports and other documents included with and part of the
12 application \$1,000.00
 - 13 (2) annual continuation of certificate of
14 authority, per kind of insurance, each year
15 continued 200.00
 - 16 (3) reinstatement of certificate of authority
17 (Section 59A-5-23 NMSA 1978) 150.00
 - 18 (4) amendment to certificate of
19 authority 200.00
 - 20 B. charter documents - filing amendment to any
21 charter document (as defined in Section 59A-5-3
22 NMSA 1978) 10.00
 - 23 C. annual statement of insurer,
24 filing 200.00
 - 25 D. service of process, acceptance by superintendent
- .175494.2SA

underscored material = new
[bracketed material] = delete

1 and issuance of certificate of service, where issued . . . 10.00

2 E. agents' licenses and appointments -

3 (1) filing application for original agent
4 license and issuance of license, if issued 30.00

5 (2) appointment of agent -

6 (a) filing appointment, per kind of
7 insurance, each insurer 20.00

8 (b) continuation of appointment, each
9 insurer, each year continued 20.00

10 (3) variable annuity agent's license -

11 (a) filing application for license and
12 issuance of license, if issued 30.00

13 (b) continuation of appointment each
14 year 20.00

15 (4) temporary license as to life and health
16 insurance or both 30.00

17 (a) as to property insurance . . . 30.00

18 (b) as to casualty/surety
19 insurance 30.00

20 (c) as to vehicle insurance . . . 30.00

21 (5) appointment of agent by agency . . . 30.00

22 F. solicitor license -

23 (1) filing application for original license
24 and issuance of license, if issued 30.00

25 (2) continuation of appointment, per kind of

underscored material = new
[bracketed material] = delete

1 insurance, each year 20.00

2 G. broker license -

3 (1) filing application for license and
4 issuance of original license, if issued 30.00

5 (2) annual continuation of
6 license 30.00

7 H. insurance vending machine license -

8 (1) filing application for original license
9 and issuance of license, if issued, each machine 25.00

10 (2) annual continuation of license, each
11 machine 25.00

12 I. examination for license, application for
13 examination conducted directly by superintendent, each grouping
14 of kinds of insurance to be covered by the examination as
15 provided by the superintendent's rules, and payable as to each
16 instance of examination 50.00

17 J. surplus line insurer - filing application for
18 qualification as eligible surplus [~~lines~~] line
19 insurer 1,000.00

20 K. surplus line broker license -

21 (1) filing application for original license
22 and issuance of license, if issued 100.00

23 (2) annual continuation of
24 license 100.00

25 L. adjuster license -

.175494.2SA

underscored material = new
[bracketed material] = delete

- 1 (1) filing application for original license
- 2 and issuance of license, if issued 30.00
- 3 (2) annual continuation of
- 4 license 30.00
- 5 M. rating organization or rating advisory
- 6 organization license -
- 7 (1) filing application for license and
- 8 issuance of license, if issued 100.00
- 9 (2) annual continuation of
- 10 license 100.00
- 11 N. nonprofit health care plans -
- 12 (1) filing application for preliminary permit
- 13 and issuance of permit, if issued 100.00
- 14 (2) certificate of authority, application,
- 15 issuance, continuation, reinstatement, charter documents - same
- 16 as for insurers
- 17 (3) annual statement, filing 200.00
- 18 (4) agents and solicitors -
- 19 (a) filing application for original
- 20 license and issuance of license, if issued 30.00
- 21 (b) examination for license conducted
- 22 directly by superintendent, each instance of
- 23 examination 50.00
- 24 (c) annual continuation of
- 25 appointment 20.00

.175494.2SA

underscored material = new
[bracketed material] = delete

- 1 O. prepaid dental plans -
- 2 (1) certificate of authority, application,
- 3 issuance, continuation, reinstatement, charter documents - same
- 4 as for insurers
- 5 (2) annual report, filing 200.00
- 6 (3) agents and solicitors -
- 7 (a) filing application for original
- 8 license and issuance of license, if issued 30.00
- 9 (b) examination for license conducted
- 10 directly by superintendent, each instance of
- 11 examination 50.00
- 12 (c) continuation of license, each
- 13 year 20.00
- 14 P. prearranged funeral insurance - application for
- 15 certificate of authority, issuance, continuation,
- 16 reinstatement, charter documents, filing annual statement,
- 17 licensing of sales representatives - same as for insurers
- 18 Q. premium finance companies -
- 19 (1) filing application for original license
- 20 and issuance of license, if issued 100.00
- 21 (2) annual renewal of license 100.00
- 22 R. motor clubs -
- 23 (1) certificate of authority -
- 24 (a) filing application for original
- 25 certificate of authority and issuance of certificate of

.175494.2SA

underscored material = new
[bracketed material] = delete

| | | |
|----|--|--------|
| 1 | authority, if issued | 200.00 |
| 2 | (b) annual continuation of certificate | |
| 3 | of authority | 100.00 |
| 4 | (2) sales representatives - | |
| 5 | (a) filing application for registration | |
| 6 | or license and issuance of registration or license, if issued, | |
| 7 | each representative | 20.00 |
| 8 | (b) annual continuation of registration | |
| 9 | or license, each representative | 20.00 |
| 10 | S. bail bondsmen - | |
| 11 | (1) filing application for original license as | |
| 12 | bail bondsman or solicitor, and issuance of license, if | |
| 13 | issued | 30.00 |
| 14 | (2) examination for license conducted directly | |
| 15 | by superintendent, each instance of | |
| 16 | examination | 50.00 |
| 17 | (3) continuation of appointment, each | |
| 18 | year | 20.00 |
| 19 | T. securities salesperson license - | |
| 20 | (1) filing application for license and | |
| 21 | issuance of license, if issued | 25.00 |
| 22 | (2) renewal of license, each year . . . | 25.00 |
| 23 | U. for each signature and seal of the | |
| 24 | superintendent affixed to any instrument | 10.00 |
| 25 | V. required filing of forms or rates - by all lines | |

.175494.2SA

underscored material = new
[bracketed material] = delete

- 1 of business other than property or casualty -
- 2 (1) rates 50.00
- 3 (2) major form - each new policy and each
- 4 package submission, which can include multiple policy forms,
- 5 application forms, rider forms, endorsement forms or amendment
- 6 forms 30.00
- 7 (3) incidental forms and rates - forms filed
- 8 for informational purposes; riders, applications, endorsements
- 9 and amendments filed individually; rate service organization
- 10 reference filings; rates filed for informational
- 11 purposes 15.00
- 12 W. health maintenance organizations -
- 13 (1) filing an application for a certificate of
- 14 authority 1,000.00
- 15 (2) annual continuation of certificate of
- 16 authority, each year continued 200.00
- 17 (3) filing each annual report 200.00
- 18 (4) filing an amendment to organizational
- 19 documents requiring approval 200.00
- 20 (5) filing informational
- 21 amendments 50.00
- 22 (6) agents and solicitors -
- 23 (a) filing application for original
- 24 license and issuance of license, if issued 30.00
- 25 (b) examination for license, each

.175494.2SA

underscored material = new
[bracketed material] = delete

1 instance of examination 50.00

2 (c) annual continuation of

3 appointment 20.00

4 X. purchasing groups and foreign risk retention

5 groups -

6 (1) original registration 500.00

7 (2) annual continuation of

8 registration 200.00

9 (3) agent or broker fees same as for

10 authorized insurers

11 Y. third party administrators -

12 (1) filing application for original individual

13 insurance administrator license 30.00

14 (2) filing application for original officer,

15 manager or partner insurance administrator

16 license 30.00

17 (3) continuation or renewal of annual

18 license 30.00

19 (4) examination for license conducted directly

20 by the superintendent, each examination 75.00

21 (5) each request for a duplicate license or

22 for each name change 30.00

23 (6) filing of annual report 50.00.

24 An insurer shall be subject to additional fees or

25 charges, termed retaliatory or reciprocal requirements,

underscored material = new
[bracketed material] = delete

1 whenever form or rate-filing fees in excess of those imposed
2 by state law are charged to insurers in New Mexico doing
3 business in another state or whenever a condition precedent
4 to the right to issue policies in another state is imposed by
5 the laws of that state over and above the conditions imposed
6 upon insurers by the laws of New Mexico; in those cases, the
7 same form or rate-filing fees may be imposed upon an insurer
8 from another state transacting or applying to transact
9 business in New Mexico so long as the higher fees remain in
10 force in the other state. If an insurer does not comply with
11 the additional retaliatory or reciprocal requirement charges
12 imposed under this subsection, the superintendent may refuse
13 to grant or may withdraw approval of the tendered form or
14 rate filing.

15 All fees are earned when paid and are not refundable."

16 Section 5. Section 59A-10-5 NMSA 1978 (being Laws
17 1984, Chapter 127, Section 165) is amended to read:

18 "59A-10-5. DEPOSITORIES DESIGNATED BY TREASURER.--The
19 state treasurer may designate any solvent trust company or
20 other solvent financial institution having trust powers
21 [~~domiciled~~] and offices located in this state as the state
22 treasurer's depository to receive and hold any general,
23 special or excess deposit of an insurer under [~~this article~~]
24 Chapter 59A, Article 10 NMSA 1978. The deposit shall be so
25 handled at the expense, if any, of the insurer, and the state

.175494.2SA

underscored material = new
[bracketed material] = delete

1 of New Mexico shall not be responsible for safekeeping
2 thereof."

3 Section 6. Section 59A-14-1 NMSA 1978 (being Laws
4 1984, Chapter 127, Section 239, as amended) is amended to
5 read:

6 "59A-14-1. SCOPE OF ARTICLE--PURPOSE--NECESSITY FOR
7 REGULATION.--

8 A. Chapter 59A, Article 14 NMSA 1978 governs the
9 placing of insurance of New Mexico risks, through licensed
10 surplus line brokers, in insurers not otherwise authorized to
11 transact insurance in this state and subject to the
12 conditions for such placing as stated in that article;
13 qualifications, licensing and duties and responsibilities of
14 surplus line brokers; and other provisions as to such surplus
15 line business and brokers. As to unauthorized insurers in
16 general, and in respects other than as to surplus line, refer
17 to Chapter 59A, Article 15 NMSA 1978.

18 B. Chapter 59A, Article 14 NMSA 1978 shall not
19 apply as to reinsurance or to the following insurances [~~when~~
20 ~~placed by general lines agents or surplus line brokers~~
21 ~~licensed as such by this state~~]:

22 (1) wet marine and transportation insurance,
23 as defined in Section 59A-7-5 NMSA 1978;

24 (2) insurance of subjects located, resident
25 or to be performed wholly outside this state or on vehicles

.175494.2SA

underscoring material = new
[bracketed material] = delete

1 or aircraft owned and principally garaged outside this state;

2 (3) insurance of property and operations of
3 railroads engaged in interstate commerce;

4 (4) insurance of aircraft of common
5 carriers, or cargo of such aircraft, or against liability,
6 other than employer's liability, arising out of ownership,
7 maintenance or use of such aircraft;

8 (5) insurance of automobile bodily injury
9 and property damage liability risks when written in Mexican
10 insurers and covering in Mexico and not in the United States;
11 or

12 (6) insurance independently procured.

13 C. Chapter 59A, Article 14 NMSA 1978 shall be
14 liberally construed and applied to promote its underlying
15 purposes, which include:

16 (1) protecting insureds and persons seeking
17 insurance in this state;

18 (2) permitting surplus lines insurance to be
19 placed with reputable and financially sound unauthorized
20 insurers, but only pursuant to Chapter 59A, Article 14 NMSA
21 1978;

22 (3) establishing a system of regulation that
23 will permit controlled access to surplus lines insurance in
24 this state; and

25 (4) assuring collection of revenues and

.175494.2SA

underscored material = new
[bracketed material] = delete

1 other amounts due to this state."

2 Section 7. Section 59A-14-7 NMSA 1978 (being Laws
3 1984, Chapter 127, Section 245, as amended by Laws 1999,
4 Chapter 272, Section 19 and also by Laws 1999, Chapter 289,
5 Section 21) is amended to read:

6 "59A-14-7. SURPLUS LINE BROKER LICENSE REQUIRED--
7 QUALIFICATIONS FOR LICENSE.--

8 A. No person shall in New Mexico be, act as or
9 hold out to be a surplus line broker or place insurance of
10 risks resident, located or to be performed in New Mexico in
11 any unauthorized insurer on behalf of others and for
12 compensation as an independent contractor in any form, unless
13 licensed as a surplus line broker under Chapter 59A, Article
14 14 NMSA 1978.

15 B. The superintendent shall, upon due application
16 and payment of the license fee, issue a license as surplus
17 line broker to a person qualified as follows:

18 (1) if the applicant is an individual, the
19 individual must ~~[be currently licensed as an insurance agent~~
20 ~~in this state as to the kinds of insurance to be exported~~
21 ~~under the surplus line broker license applied for, and]~~ have
22 had experience or special training or education sufficient in
23 duration and character ~~[as such an agent as]~~ to render the
24 applicant, in the opinion of the superintendent, reasonably
25 competent to engage in business as a surplus line broker; and

.175494.2SA

underscored material = new
[bracketed material] = delete

1 (2) if the applicant is a firm or
2 corporation, all individuals to represent it as a surplus
3 lines broker in this state must be licensed [~~agents. Each~~
4 ~~such individual shall be qualified as for an individual~~
5 ~~license as surplus line broker, and an additional license fee~~
6 ~~shall be paid as to each individual, in excess of one, who is~~
7 ~~to exercise the surplus line broker license powers; and~~

8 (3) ~~must file with the application the bond~~
9 ~~provided for in Section 59A-14-8 NMSA 1978]~~ surplus lines
10 brokers.

11 C. Licensing procedure, duration and related
12 matters are as provided in Chapter 59A, Article 11 NMSA 1978,
13 and license fee is as specified in Section 59A-6-1 NMSA
14 1978."

15 Section 8. Section 59A-17-34 NMSA 1978 (being Laws
16 1984, Chapter 127, Section 329, as amended) is amended to
17 read:

18 "59A-17-34. HEARING AND REVIEW AS TO SUPERINTENDENT'S
19 ACTIONS.--

20 A. Any person aggrieved by any action, threatened
21 action or failure to act of the superintendent or otherwise
22 under Chapter 59A, Article 17 NMSA 1978 shall have the same
23 right to a hearing before the superintendent with respect
24 thereto as provided for in general under Section 59A-4-15
25 NMSA 1978. Notice of hearing shall be given, the hearing

.175494.2SA

1 conducted, rights and powers exercised and the
2 superintendent's order on hearing made and given as provided
3 as to hearings in general under the applicable provisions of
4 Chapter 59A, Article 4 NMSA 1978.

5 B. Any person aggrieved by the superintendent's
6 order [~~on such hearing~~] issued pursuant to this section or by
7 the superintendent's refusal to hold the hearing may request
8 a review by the public regulation commission in the manner
9 set forth by rule of the commission. The request for review
10 shall be filed no later than thirty days after the issuance
11 of the order of the superintendent or the superintendent's
12 refusal to hold a hearing."

13 - 20 -
14
15
16
17
18
19
20
21
22
23
24
25